

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

CIVIL ACTION NO:

WILMINGTON SAVINGS FUND SOCIETY,
FSB, D/B/A CHRISTIANA TRUST AS
OWNER TRUSTEE OF THE RESIDENTIAL
CREDIT OPPORTUNITIES TRUST V

PLAINTIFF

v.

DOROTHY M. YORK, BARRY LAMB,
PERSONAL REPRESENTATIVE OF THE
ESTATE OF WILLIAM F. YORK, BANK OF
AMERIC, N.A., DEPARTMENT OF THE
TREASURY-INTERNAL REVENUE
SERVICE, GOWEN POWER SYSTEMS AND
OSTERMAN PROPANE LLC DBA
DOWNEAST ENERGY

DEFENDANTS

COMPLAINT FOR FORECLOSURE

NOW COMES the Plaintiff, Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V, by and through its attorneys, Bendett & McHugh, P.C., and complains against the Defendants pursuant to 14 M.R.S. § 6321 et seq., saying further as follows:

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction pursuant 28 U.S.C. § 1332 because the Plaintiff and Defendants are citizens of different states and the matter in controversy exceeds the sum

or value of \$75,000.00, exclusive of interest and costs. Any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought under 28 U.S.C. § 2201.

2. Venue is properly exercised pursuant to 28 U.S.C. §1391(b)(2) insofar as all or a substantial portion of the events that give rise to the Plaintiff's claims transpired in Maine and the property is located in Maine.

PARTIES

3. Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V, ("Plaintiff") is a corporate trustee, incorporated in the State of Delaware, having a principal place of business at 838 N Market St Wilmington, DE 19801-3011.
4. The Defendant, Dorothy M. York ("Defendant"), is a resident of Durham, County of Androscoggin and State of Maine.
5. The Defendant, Barry Lamb, Personal Representative of the Estate of William F. York ("Defendant") is a resident of Osprey, Florida.
6. Bank of America, N.A., ("Defendant") upon information and belief, has an address located at 100 North Tryon Street, Charlotte, NC 28255.
7. Department of the Treasury-Internal Revenue Service, ("Defendant Party-in-Interest") upon information and belief, has an address located at 1111 Constitution Avenue, NW, Washington, DC 20224.
8. Gowen Power Systems, ("Defendant") upon information and belief, has an address located c/o Charles E. Miller, P.O. Box 9729, Portland, ME 04104.

9. Osterman Propane LLC dba Downeast Energy, (“Defendant”) upon information and belief, has an address located c/o C T Corporation System, 1536 Main Street, Readfield, ME 04355.

FACTS

10. Defendant Dorothy M. York is the owner of certain real property located at 335 Brown Road, Durham, Maine (the “Premises”) by virtue of a deed from Todd P. Beaulieu to the Defendant Dorothy M. York, the late Wayne F. York and the late William F. York, dated February 10, 2005, and recorded in the Androscoggin County Registry of Deeds on February 11, 2005 in Book 6234 at Page 35 and being more particularly described by the attached legal description. Upon information and belief, Wayne F. York died on or about August 22, 2005. Upon information and belief, William F. York died on or about November 29, 2016, leaving the Defendant Dorothy M. York as the sole surviving owner of the Premises. *See* Exhibit A.
11. On February 10, 2005, the late Wayne F. York and the late William F. York, executed and delivered to The Mortgage Office a certain promissory note in the original principal amount of \$359,650.00 (the “Note”). *See* Exhibit B.
12. The Plaintiff is entitled to enforce the Note as the Note was endorsed to Mortgage Lenders Network, USA and subsequently endorsed in blank.
13. Plaintiff certifies that the owner of the Note is Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V.
14. To secure said Note, in the amount of \$359,650.00, the Defendant, Dorothy M. York, the late Wayne F. York and the late William F. York, executed and delivered a

Mortgage in favor of Mortgage Electronic Registration Systems, Inc., as nominee for The Mortgage Office, dated February 10, 2005 and recorded in the Androscoggin County Registry of Deeds in Book 6234 at Page 37 securing the property located at 335 Brown Road, Durham, ME, 04222 (the “Mortgage”). *See* Exhibit C.

15. Said Mortgage was assigned from Mortgage Electronic Registration Systems, Inc., as nominee for The Mortgage Office to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP by an Assignment of Mortgage, dated August 19, 2010 and recorded on August 26, 2010 in Book 8001 at Page 90 of the Androscoggin County Registry of Deeds. *See* Exhibit D1. Said assignment was corrected by a Corrective Assignment of Mortgage, dated August 17, 2012 and recorded on August 27, 2012 in Book 8477 at Page 150 of the Androscoggin County Registry of Deeds. *See* Exhibit D2.
16. Said Mortgage was thereafter assigned from Bank of America, N.A. successor by merger to BAC Home Loan Servicing, LP fka Countrywide Home Loans Servicing, LP to Homeward Residential, Inc. fka America Home Mortgage Servicing, Inc. by an Assignment of Mortgage, dated October 24, 2012 and recorded on November 13, 2012 in Book 8535 at Page 174 of the Androscoggin County Registry of Deeds. *See* Exhibit D3.
17. Said Mortgage was thereafter assigned from Homeward Residential, Inc. fka America Home Mortgage Servicing, Inc. to Ocwen Loan Servicing, LLC by an Assignment of Mortgage, dated June 29, 2013 and recorded on July 17, 2013 in Book 8723 at Page 119 of the Androscoggin County Registry of Deeds. *See* Exhibit D4.
18. Said Mortgage was subsequently assigned from The Mortgage Office to Plaintiff by a Quitclaim Assignment of Mortgage, dated August 28, 2018 and recorded on September

4, 2018 in Book 9924 at Page 74 of the Androscoggin County Registry of Deeds. *See* Exhibit D5.

19. Plaintiff, directly or through its agent, is in possession of the original Note, Mortgage and any assignments.

20. Plaintiff is the party entitled to collect the debt evidenced by said Note and is the party entitled to enforce the Mortgage, and has the right to foreclose the Mortgage.

21. Bank of America, N.A. claims or may claim an interest in the Premises by virtue of a mortgage, in the principal amount of \$272,326.00, dated October 30, 2006 and recorded in Book 7017 at Page 88 of the Androscoggin County Registry of Deeds. *See* Exhibit E.

22. Department of the Treasury-Internal Revenue Service claims or may claim an interest in the Premises by virtue of a lien, in the amount of \$781,585.04, dated June 20, 2014 and recorded in Book 8942 at Page 276 of the Androscoggin County Registry of Deeds.

Department of the Treasury-Internal Revenue Service claims or may claim an interest in the Premises by virtue of a lien, in the amount of \$3,737.79, dated August 31, 2015 and recorded in Book 9220 at Page 255 of the Androscoggin County Registry of Deeds.

Department of the Treasury-Internal Revenue Service claims or may claim an interest in the Premises by virtue of a lien, in the amount of \$3,381.11, dated September 10, 2015 and recorded in Book 9228 at Page 12 of the Androscoggin County Registry of Deeds. *See* Exhibit F.

23. Gowen Power Systems claims or may claim an interest in the Premises by virtue of a Writ of Execution, in the amount of \$3,633.18, dated May 18, 2015 and recorded in Book 9145 at Page 94 of the Androscoggin County Registry of Deeds. *See* Exhibit G.

24. Osterman Propane LLC dba Downeast Energy claims or may claim an interest in the Premises by virtue of a Judgment, in the amount of \$2,083.87, dated May 7, 2015 and recorded in Book 9210 at Page 13 of the Androscoggin County Registry of Deeds. Osterman Propane LLC dba Downeast Energy claims or may claim an interest in the Premises by virtue of a Judgment, in the amount of \$1,725.68, dated May 14, 2015 and recorded in Book 9238 at Page 196 of the Androscoggin County Registry of Deeds. *See* Exhibit H.
25. The Note is presently in default as the monthly payment due February 1, 2016, and all payments due thereafter have failed to be made. As a result thereof, Defendant has breached a condition of the Mortgage.
26. In compliance with the Note and Mortgage and/or 14 M.R.S.A. § 6111, on or about October 3, 2018, Plaintiff sent a Notice of Default to the mortgagor and any co-signor against whom the mortgagee is enforcing the obligation secured by the mortgage, by certified mail, return receipt requested and/or by regular mail, postage prepaid (herein after referred to as the “Demand Letter”). *See* Exhibit I.
27. The Defendants, Dorothy M. York and Barry Lamb, as Personal Representative of the Estate of William F. York, have failed to cure the default prior to the expiration of the Demand Letter. In accordance with the Note and the Mortgage, the Plaintiff has declared the entire principal amount outstanding, accrued interest thereon, and all other sums due under the Note and Mortgage to be presently due and payable.
28. The total unpaid principal balance owed under the Note and Mortgage as of January 12, 2018, is \$284,023.01 plus interest, late charges, expenses and reasonable attorney’s fees and costs.

29. Plaintiff anticipates that additional disbursements will be made for attorney's fees and other services rendered during the foreclosure and sale.

30. Upon information and belief, the Defendant, Dorothy M. York, is presently in possession of the subject property originally secured by the Mortgage.

COUNT I – FORECLOSURE

31. The Plaintiff, Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V, repeats and realleges paragraphs 1 through 30 as if fully set forth herein.

32. This is an action for foreclosure and title to real estate located at 335 Brown Road, Durham, ME, 04222, County of Androscoggin, and State of Maine. *See* Exhibit A.

33. The Plaintiff, Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V, is the holder of the Note, endorsed in blank, and is in physical possession of the Note. As such, Plaintiff has the right to foreclosure upon the subject property.

34. Plaintiff is the current owner and investor of the Mortgage and Note.

35. The Defendants, Dorothy M. York and Barry Lamb, as Personal Representative of the Estate of William F. York, are presently in default on said Mortgage and Note, having failed to make the monthly payment due. As a result, a condition of the Mortgage and Note has been breached.

36. The total unpaid principal balance owed under the Note and Mortgage as of January 12, 2018, is \$284,023.01 plus interest, late charges, expenses and reasonable attorney's fees and costs.

37. The record established through the Androscoggin County Registry of Deeds indicates that there are no public utility easements recorded subsequent to the Mortgage and prior to the commencement of these proceedings affecting the mortgaged premises at issue herein.
38. By virtue of the Defendants' breach of condition, the Plaintiff, Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V, hereby demands a foreclosure on said real estate.
39. Notice in conformity with 14 M.R.S.A. §6111 was sent to the Defendant, Dorothy M. York, the late William York and the late Wayne York, on October 3, 2018 as evidenced by the Certificate of Mailing. *See* Exhibit I.
40. The Defendants, Dorothy M. York and Barry Lamb, as Personal Representative of the Estate of William F. York, are not in the Military as evidenced by the attached Exhibit J.

COUNT 11 – UNJUST ENRICHMENT

41. The Plaintiff, Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V repeats and re-alleges paragraphs 1 through 40 as if fully set forth herein.
42. Mortgage Electronic Registration Systems, Inc., as nominee for The Mortgage Office, predecessor-in-interest to Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V, loaned the late Wayne F. York and the late William York \$359,650.00. *See* Exhibit B.

43. The Defendants, Dorothy M. York and Barry Lamb, as Personal Representative of the Estate of William F. York, have failed to repay the loan obligation pursuant to the terms of the Note and Mortgage.

44. As a result, the Defendants, Dorothy M. York and Barry Lamb, as Personal Representative of the Estate of William F. York, have been unjustly enriched to the detriment of the Plaintiff, Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V, as successor-in-interest to Mortgage Electronic Registration Systems, Inc., as nominee for The Mortgage Office by having received the benefits described above without repayment pursuant to the terms of the Note and Mortgage.

45. As such, the Plaintiff, Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V, is entitled to relief

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff, Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V, prays this Honorable Court: Find that the Defendants entered into a contract for a sum certain in exchange for a security interest in the subject property.

- a. Determine that there has been a breach of condition of the Mortgage;
- b. Find that Plaintiff, Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V, is entitled to enforce the terms and conditions of the Note and Mortgage;

- c. Determine the amounts due under the Note and secured by the Mortgage, including principal, interest, reasonable attorney's fees, court costs and other expenses;
- d. Find that the Defendant, Barry Lamb, as Personal Representative of the Estate of William F. York, is liable for any deficiency balance remaining due to Plaintiff after the sale of the mortgaged real estate and application of the proceeds of sale (this prayer is void for any Defendant that did not execute the Note or Guaranty and for any Defendant who has been granted discharge in bankruptcy);
- e. Issue a Judgment of Foreclosure and Sale in conformity with Title 14, M.R.S. § 6322;
- f. Order exclusive possession of the real estate to Plaintiff upon the expiration of the statutory ninety (90) day period of redemption and direct the clerk to issue a Writ of Possession at the request of Plaintiff;
- g. Find that by virtue of the Note and Mortgage, the Defendants, Dorothy M. York, have been unjustly enriched at the Plaintiff's expense; and
- h. Order such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

Wilmington Savings Fund Society, FSB, D/B/A
Christiana Trust as Owner Trustee of the
Residential Credit Opportunities Trust V

By its Attorneys,
BENDETT & MCHUGH, P.C.

Dated: November 20, 2018

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EXHIBIT A
335 Brown Road, Durham, Maine

A certain lot or parcel of land, with the buildings thereon, situated in the Town of Durham, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at an iron pin on the northeasterly sideline of Brown Road, said iron pin marking the southerly corner of land now or formerly of Russell K. Birch as described in a deed recorded in the Androscoggin County Registry of Deeds in Book 4831, Page 36;

Thence S 36° 20' 43" E along the said sideline of Brown Road a distance of 211.61 feet to a point;

Thence continuing along the said sideline of Brown Road in a southeasterly direction and along a curve to the right having a radius of 2668.75 feet an arc distance of 88.39 feet to a 5/8" rebar with cap (RLS 1229) set;

Thence N 55° 56' 35" E along other land of Marcia M. Barrington, Trustee of the Ralph E. Martin Testamentary Trust a distance of 437.61 feet to a 5/8" rebar with cap (RLS 1229) set;

Thence N 36° 20' 43" W along other land of Marcia M. Barrington, Trustee of the Ralph E. Martin Testamentary Trust a distance of 300.04 feet to a 5/8" rebar with cap (RLS 1229) set and said land now or formerly of Birch;

Thence S 55° 56' 35" W along said land now or formerly of Birch a distance of 436.15 feet to the iron pin at the point of beginning.

Containing 130,800.00 square feet, more or less.

Reference is made to Plan of Land, Brown Road, Durham, Maine made for Marcia Barrington by Sawyer Engineering & Surveying, Inc. dated June 26, 2003, as revised through August 4, 2003.

Being the same premises conveyed to the Grantors by warranty deed from Todd P. Beaulieu of even date to be recorded herewith.